

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

DENNIS MICHAEL SALERNO,

Case No. 1:05-CV-344

Petitioner,

v.

Hon. Richard Alan Enslen

STATE OF MICHIGAN,

ORDER

Respondent.

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Petitioner Dennis Michael Salerno has moved for a certificate of appealability regarding the Court's April 13, 2007 procedural Order, has moved for leave to appeal the Order *in forma pauperis*, and has moved for reconsideration of the Order to permit his filing of additional claims. Oral argument is unnecessary. *See* W.D. Mich. L. Civ. R. 7.3(d).

Petitioner's recent appeal is interlocutory in nature, concerns procedural rulings and, pursuant to 28 U.S.C. § 1291, lacks any basis for appellate jurisdiction. *See U.S. ex rel. Pogue v. Diabetes Treatment Centers of America, Inc.*, 444 F.3d 462, 471 (6th Cir. 2006). To the extent that a certificate of appealability ruling on such appeal is necessary, the Court finds that Petitioner's challenges to the procedural rulings are not debatable and an interlocutory appeal of those rulings does not warrant encouragement. *See Slack v. McDaniel*, 529 U.S. 473, 483-84 (2000); *Barefoot v. Estelle*, 463 U.S. 880, 893 & n.4 (1983). Therefore, a certificate of appealability will be denied as to all of Petitioner's interlocutory challenges to the April 13, 2007 procedural Order.

Regarding Petitioner's request to institute the interlocutory appeal *in forma pauperis*, Federal Rule of Appellate Procedure 24(a)(1)-(3) requires a District Court to consider an appellant's motion to proceed *in forma pauperis* on appeal and permits denial of such motion because, among other

reasons, the appeal could not be taken in objective good faith. The instant appeal cannot be taken in objective good faith because there is no legal basis to support the exercise of appellate jurisdiction pending final judgment. As such, the request to proceed *in forma pauperis* will be denied and the Court will certify this denial to the Sixth Circuit Court of Appeals consistent with the rule language.

As to Petitioner's "Motion for Leave to File," this request is functionally a request for reconsideration of the portion of the April 13, 2007 Order which denied belated amendment to the Petition for Writ of Habeas Corpus. Pursuant to Western District of Michigan Local Civil Rule 7.4(a), reconsideration is appropriate only when the movant "demonstrate[s] a palpable defect by which the Court and the parties have been mislead . . . [and] that a different disposition must result from the correction thereof." Petitioner's Motion fails to meet this standard and does not otherwise merit relief under this or any other court rule.

THEREFORE, IT IS HEREBY ORDERED that Petitioner Dennis Michael Salerno's Motion for Leave to Appeal *in Forma Pauperis* (Dkt. No. 54) is **DENIED**, the Court certifies in accordance with Federal Rule of Appellate Procedure 24(a)(4) that it has denied Petitioner's Motion and the appeal is not taken in good faith, and the Clerk shall transmit notice of this certification to the Sixth Circuit Court of Appeals.

IT IS FURTHER ORDERED that Petitioner's Motion for Certificate of Appealability (Dkt. No. 53) is **DENIED** as to all grounds asserted.

IT IS FURTHER ORDERED that Petitioner's Motion for Leave to File (Dkt. No. 55) is **DENIED**.

DATED in Kalamazoo, MI:
June 1, 2007

/s/ Richard Alan Enslen
RICHARD ALAN ENSLEN
SENIOR UNITED STATES DISTRICT JUDGE